Supreme Court, U.S.
FILED
NOV 21 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-464

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

RAILWAY LABOR EXECUTIVES' ASSOCIATION, *et al.*,
Petitioners,

v.

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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RESPONDENTS' SUPPLEMENTAL BRIEF

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RESPONDENTS' SUPPLEMENTAL BRIEF

This supplemental brief is being filed to bring to the Court's attention the position of the United States on the question presented in this case, which we submit supports our contention that the petition presents no issue warranting review by this Court, either as a matter related to other pending line sale cases or on its own merits.

The Solicitor General has advised the Court that neither the United States nor the Interstate Commerce Commission will file briefs in response to the petition for certiorari in this case, because the court below, rather than addressing the Interstate Commerce Act questions involved in other pending line sale cases, resolved this

case on "a fully dispositive alternative ground."[1] Thus, the Solicitor General recognizes that the petition in this case is not, as RLEA has contended, "inextricably intertwined" (Pet. at 11) with the other line sale cases now pending before the Court.

In its Brief as Amicus Curiae in *Pittsburgh & Lake Erie R.R.* v. *RLEA*, Nos. 87-1589 and 87-1888 (filed Nov. 7, 1988), the United States did address the question presented here as to the proper standard by which courts are to determine whether a union claim that a carrier has taken action in violation of the Railway Labor Act's status quo requirements presents only an arbitrable minor dispute over the scope of the carrier's rights under existing agreements, but stated that this question is well settled:

> A question occasionally arises whether a collective bargaining agreement does or does not permit labor force reductions in certain circumstances. The resolution of that question, which turns on an interpretation of the agreement, is a "minor dispute" that is subject to mandatory arbitration by the National Railroad Adjustment Board (NRAB) or to its statutory alternatives. See 45 U.S.C. 153 ((First) (Second)). The court of appeals did not address that question [in *Pittsburgh & Lake Erie*] (87-1888 Pet. App. 16a-17a n.9). It is well settled (and not a matter of dispute in this case) that "if the subject matter of the parties' dispute is 'arguably comprehended' within, and potentially amenable to resolution by reference to, their existing collective bargaining agreements and the attendant established past practices" the matter falls within the exclusive jurisdiction of the NRAB.[2]

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[1] October 17, 1988 letter from Hon. Charles Fried, Solicitor General, to Hon. Joseph F. Spaniol, Clerk, United States Supreme Court, re this case, reproduced as the Appendix to this Supplemental Brief.

[2] Brief for the United States as Amicus Curiae, Nos. 87-1589 and 87-1888, at 15-16 n.12, quoting the court of appeals decision in this case (No. 88-464) as authority.

This analysis by the Solicitor General confirms that the issues presented by the petition in this case are well settled in their own right and do not warrant review.

Respectfully submitted,

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APPENDIX

[SEAL]

U.S. Department of Justice
Office of the Solicitor General
Washington, D.C. 20530
October 17, 1988

Honorable Joseph F. Spaniol, Jr.
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Railway Labor Executives' Ass'n v. Chicago & Western Transp. Co., No. 88-464

Dear Mr. Spaniol:

The petition for a writ of certiorari in the above case was filed on September 16, 1988, and was served on the government on that date. The Solicitor General and the Interstate Commerce Commission (ICC) do not intend to file a response to the petition unless requested to do so by the Court.

This case presents a dispute between a railroad and rail labor arising from the railroad's decision to sell a portion of its rail lines to another company. The ICC intervened in the district court proceeding to urge that rail labor's objection to the transaction amounted to an impermissible collateral attack upon the ICC's decision approving the sale pursuant to the interstate Commerce Act, 49 U.S.C. 10101 *et seq.* See Pet. App. 4a, 21a n.6. The court of appeals resolved the case, however, on a fully dispositive alternative ground (*ibid.*).

The ICC submits that since the petition for a writ of certiorari does not raise a question under the Interstate Commerce Act, the ICC has no occasion to file a response. The ICC continues to believe that this matter should have been resolved under the Interstate Commerce Act, but is of the view that the question of the proper relationship between that Act and the Railway

Labor Act is now sharply presented in other proceedings before this Court in which the ICC has filed or will file its statement of position. The Solicitor General, for his part, submits that the ICC is not a proper party respondent in this case because the ICC lacked statutory authority to intervene through its own counsel in the lower court proceedings. See Brief for the United States as Amicus Curiae in *ICC* v. *Pittsburgh & Lake Erie R.R.*, petition for cert. pending, No. 88-217. The Solicitor General and the ICC accordingly have agreed, albeit for different reasons, to abstain from filing a response in this case.

Sincerely,

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Solicitor General

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